IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Crl.Rev.Pet.No. 3269 of 2007()

CC.761/06 OF JFCM-I, THODUPUZHA

REVN. PETITIONER: PETITIONER/ACCUSED:

SUNNY MATHEW, S/O. MATHEW,
PUTHIYEDATH HOUSE, THODUPUZHA KARA,
THODUPUZHA VILLAGE.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENTS: RESPONDENTS/COMPLAINANT NO.1:

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1. BABY THOMAS,
PUTHIYEDATH HOUSE, NEELOOR P.O.,KOTTAYAM DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3269 OF 2007

Dated this the 11th day of September, 2007

O R D E R

The revision petitioner, who is the accused in C.C.No.761/06 on the file of the JFCM-I, Thodupuzha for an offence punishable under section 138 of the Negotiable Instruments Act, 1881, filed CMP.No.12644/07 before the trial court to re-open the prosecution evidence as well as to permit him to adduce defence evidence. As per order dated 31.7.07, the Magistrate granted the second prayer but refused the first prayer. It is aggrieved by the refusal by the Magistrate to re-open the prosecution evidence that the petitioner has approached this court with the present revision.

2. The evidence for the prosecution was closed on 16.9.06 and the case was thereafter posted for examination of the accused under section 313 Cr.P.C. and after two or three postings the accused was finally examined on 20.10.06 under section 313 Cr.P.C. At a time when the case stood posted for defence evidence, the revision petitioner did not co-operate with the court and he eventually failed to appear before the court necessitating

the initiation of proceedings under sections 82 and 83 Cr.P.C. On 28.6.07 the revision petitioner approached this court and filed the above petition.

3. The complainant's evidence was recorded in the presence of the revision petitioner who had every opportunity to cross-examine the complainant's witnesses. The learned Magistrate was, therefore, fully justified in disallowing his request to re-open the prosecution evidence. The Magistrate, however, has been indulgent enough to permit the revision petitioner to adduce defence evidence. If he has got any defence in the matter, he can adduce whatever evidence he deems fit to substantiate the defence. He cannot, however, re-open the prosecution evidence since he himself has been at fault in not co-operating with the trial. I see no reason to interfere with the impugned order.

This revision is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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